UNITED STATES DISTRICT COURT IN THE SOUTHERN DISTRICT OF TEXAS CORPUS CHRISTI DIVISION

Eduardo Ortiz, Plaintiff,

v.

C.A. No.02:06-cv-323

Romadal LTD. I, D/B/A Tony Roma's, Defendant.

MEMORANDUM OPINION AND ORDER DENYING DEFENDANT'S MOTION TO DISMISS

Pending before the Court is defendant's Motion to Dismiss (D.E. 17). The Court heard arguments on the motion during a telephone conference on December 21, 2006. At issue is whether the plaintiff's amended pleading (D.E. 11) can relate back to the time of filing of the original complaint to overcome the statute of limitations imposed by Title VII. *See* 42 U.S.C. 2000e-5(f)(1) (2006).

Rule 15(c) allows an amendment changing the name of a party to relate back if "the change is the result of an error, such as a misnomer or misidentification." *Jacobsen v. Osborne, et. al.*, 133 F.3d 315, 320 (5th Cir. 1998) (quoting *Barrow v. Wethersfield Police Dept.*, 66 F.3d 466, 469 (2nd Cir. 1995)). The Court finds that plaintiff's failure to name defendant Romadal sooner was due to a misidentification of the appropriate corporate entity doing business as Tony Roma's. Rule 15(c) applies to such a mistake. *Id.*

Defendant's Motion to Dismiss (D.E. 17) is DENIED.

Ordered this 21st day of December, 2006.

CHIEF JUDGE